17SL-CC00473

IN THE 21ST CIRCUIT COURT OF SAINT LOUIS COUNTY
STATE OF MISSOURI

GEORGE DAVIS 6726 Silverstone Court Byrnes Mill, MO 63051 Plaintiff,	)	Cause Number: Division Number:
vs.	)	
FARMERS INSURANCE COMPANY, INC. **PLEASE SERVE:** John M. Huff, Director, Missouri Department of Insurance 301 West High Street, Suite 630 Jefferson City, MO 65101 Defendant.	)	

PETITION FOR DECLARATORY JUDGMENT

COMES NOW Plaintiff, George Davis (hereinafter "Plaintiff"), by and through his undersigned counsel and for his Petition for Declaratory Judgment pursuant to Rule 87 of the Missouri Supreme Court Rules of Civil Procedure, and hereby alleges as follows:

1. That at all times herein relevant, Defendant, Farmers Insurance Company, Inc. (hereinafter "Defendant"), was an insurance company incorporated in California and licensed to write insurance in the State of Missouri.

2. That prior to April 23, 2016, Defendant issued an automobile insurance policy (hereinafter "the policy"), policy number 19336-05-79, to Plaintiff and his spouse.

3. That under the provisions of the policy, Defendant provided Underinsured Motorist Coverage to Plaintiff.

4. That Plaintiff has complied with all conditions and terms of the policy, including the payment of timely premiums.

EXHIBIT
A

5. That on April 23, 2016, while the policy was in full force and effect, Plaintiff was operating a vehicle he owned that was not listed under the Declarations page of the policy when Plaintiff's vehicle was struck by a 2012 Chrysler operated by Mary Cleary.

6. That as a result of said collision, Plaintiff suffered bodily injuries.

7. That at the date and time in question, Lori Cleary was insured by Travelers Insurance against any sum which she would become obligated to pay by reason of the liability imposed on her by law for damages for bodily injury sustained by any person caused by accident and arising out of the ownership, maintenance, or use of the aforementioned Chrysler 200.

8. That at the date and time in question, the policy of insurance covering the 2012 Chrysler 200 and listing Lori Cleary as the named insured extended liability coverage to Mary Cleary through a provision regarding family members as insured persons.

8. That Plaintiff made a demand on Travelers Insurance to recover damages for the aforementioned bodily injuries.

9. That One Hundred Thousand Dollars ($100,000.00) limits of liability under the insurance policy issued by Travelers Insurance to Lori Cleary have been tendered in the amount of One Hundred Thousand Dollars ($100,000.00) in settlement to Plaintiff on or about May 18, 2016.

10. That by letter dated June 9, 2016, addressed to Tracie Shepherd, claims representative for Defendant, from Ely Hadowsky, attorney for Plaintiff, Plaintiff advised Defendant that he would be pursuing and Underinsured Motorist Claim on his policy through Defendant as the at-fault driver, Mary Cleary, was underinsured.

11. That Defendant, by letter dated June 11, 2016, addressed to Ely Hadowsky, attorney for Plaintiff, informed Plaintiff that Defendant would be denying Underinsured Motorist Coverage under the policy.

CAUSE OF ACTION FOR DECLARATORY JUDGMENT

12. Plaintiff hereby incorporates each and every allegation in paragraph 1 through 11 as though fully set forth herein.

13. Plaintiff is entitled to a declaratory judgment that Defendant's insurance policy is ambiguous and thus did not effectively limit coverage under the Underinsured Motorist Coverage provision of the policy to apply only to vehicles for which the policy or endorsement is listed on the Declarations page of the policy.

14. Defendant's policy in the endorsement entitled "Endorsement Adding Underinsured Motorist Coverage – Missouri (MO 025 – 1st Edition)", states in pertinent part:

> "This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page."

15. The "Exclusions" provision of Defendant's policy located within the subheading "Coverage C – Uninsured Motorist Coverage (Including Underinsured Motorist Coverage)", states:

> "This coverage does not apply to bodily injury sustained by a person:
>
> > 3. If the injured person was occupying a vehicle you do not own which is insured for this coverage under another policy."

16. The two clauses in paragraphs 14 and 15 above that Defendant relies on in order to deny Plaintiff's Underinsured Motorist Coverage create an ambiguity in the policy because the clauses directly conflict with one another.

17. The directly conflicting clauses in paragraphs 14 and 15 above create a situation where an insured may reasonably believe they can recover under the Underinsured Motorist Coverage provision in the policy while occupying an owned not listed in the Declarations page and insured for Underinsured Motorist Coverage under another policy.

18. One reasonable interpretation of exclusion 3 is that by explicitly excluding recovery of injured persons while occupying a non-owned vehicle that is insured for Underinsured Motorist Coverage under another policy, the insured is not precluded from recovering Underinsured Motorist Coverage benefits when occupying a owned vehicle insured for Underinsured Motorist Coverage under a different policy or recovering Underinsured Motorist benefits when driving an owned vehicle that is insured for Underinsured Motorist Coverage under a different policy.

19. Further, the policy includes no language stating that either clause mentioned in paragraph 16 supersedes any other clause within the contract.

20. Thus, because of the aforementioned ambiguity, Plaintiff is entitled to recovery under the Underinsured Motorist Coverage provided in the policy.

WHEREFORE, Plaintiff, George Davis, respectfully requests that this Court issues a declaration in favor of Plaintiff and against Defendant that Defendant's insurance policy was ambiguous, and that Defendant must therefore tender the policy limits of Plaintiff's Underinsured Motorist Coverage. Plaintiff also seeks such further relief as the Court determines to be just and proper, including injunctive relief, attorney's fees, and costs of bringing this action.

Respectfully submitted,

/s/ Ely Hadowsky

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IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: ELLEN LEVY SIWAK	**Case Number: 17SL-CC00473**
Plaintiff/Petitioner: GEORGE DAVIS vs.	Plaintiff's/Petitioner's Attorney/Address ELY HADOWSKY 1 MEMORIAL DR 11TH FLOOR ST LOUIS, MO 63102
Defendant/Respondent: FARMERS INSURANCE COMPANY	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Pers Injury-Vehicular	

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: FARMERS INSURANCE COMPANY
Alias:
301 WEST HIGH STREET, SUITE630
JEFFERSON CITY, MO 65101

COURT SEAL OF

ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739 or TTY at 314-615-4567, at least three business days in advance of the court proceeding.

07-FEB-2017
Date

Clerk

Further Information:
HB

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with ______________________ a person of the Defendant's/Respondent's family over the age of 15 years.

☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to

______________________ (name) ______________________ (title).

☐ other ______________________.

Served at ______________________ (address)

in ______________ (County/City of St. Louis), MO, on ______________ (date) at ______________ (time).

____
Printed Name of Sheriff or Server

____
Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on ______________________ (date).

My commission expires: ______________ Date ______________ Notary Public

Sheriff's Fees, if applicable

Summons	$______
Non Est	$______
Sheriff's Deputy Salary	
Supplemental Surcharge	$ 10.00
Mileage	$______ (_____ miles @ $._____ per mile)
Total	$______

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

Twenty First Judicial Circuit

NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES

Purpose of Notice

As a party to a lawsuit in this court, you have the right to have a judge or jury decide your case. However, most lawsuits are settled by the parties before a trial takes place. This is often true even when the parties initially believe that settlement is not possible. A settlement reduces the expense and inconvenience of litigation. It also eliminates any uncertainty about the results of a trial.

Alternative dispute resolution services and procedures are available that may help the parties settle their lawsuit faster and at less cost. Often such services are most effective in reducing costs if used early in the course of a lawsuit. Your attorney can aid you in deciding whether and when such services would be helpful in your case.

Your Rights and Obligations in Court Are Not Affected By This Notice

You may decide to use an alternative dispute resolution procedure if the other parties to your case agree to do so. In some circumstances, a judge of this court may refer your case to an alternative dispute resolution procedure described below. These procedures are not a substitute for the services of a lawyer and consultation with a lawyer is recommended. Because you are a party to a lawsuit, you have obligations and deadlines which must be followed whether you use an alternative dispute resolution procedure or not. **IF YOU HAVE BEEN SERVED WITH A PETITION, YOU MUST FILE A RESPONSE ON TIME TO AVOID THE RISK OF DEFAULT JUDGMENT, WHETHER OR NOT YOU CHOOSE TO PURSUE AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.**

Alternative Dispute Resolution Procedures

There are several procedures designed to help parties settle lawsuits. Most of these procedures involve the services of a neutral third party, often referred to as the "neutral," who is trained in dispute resolution and is not partial to any party. The services are provided by individuals and organizations who may charge a fee for this help. Some of the recognized alternative dispute resolutions procedures are:

(1) Advisory Arbitration: A procedure in which a neutral person or persons (typically one person or a panel of three persons) hears both sides and decides the case. The arbitrator's decision is not binding and simply serves to guide the parties in trying to settle their lawsuit. An arbitration is typically less formal than a trial, is usually shorter, and may be conducted in a private setting at a time mutually agreeable to the parties. The parties, by agreement, may select the arbitrator(s) and determine the rules under which the arbitration will be conducted.

(2) Mediation: A process in which a neutral third party facilitates communication between the parties to promote settlement. An effective mediator may offer solutions that have not been considered by the parties or their lawyers. A mediator may not impose his or her own judgment on the issues for that of the parties.

(3) Early Neutral Evaluation ("ENE"): A process designed to bring the parties to the litigation and their counsel together in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process.

(4) Mini-Trial: A process in which each party and their counsel present their case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding.

(5) Summary Jury Trial: A summary jury trial is a non binding, informal settlement process in which jurors hear abbreviated case presentations. A judge or neutral presides over the hearing, but there are no witnesses and the rules of evidence are relaxed. After the "trial", the jurors retire to deliberate and then deliver an advisory verdict. The verdict then becomes the starting point for settlement negotiations among the parties.

Selecting an Alternative Dispute Resolution Procedure and a Neutral

If the parties agree to use an alternative dispute resolution procedure, they must decide what type of procedure to use and the identity of the neutral. As a public service, the St. Louis County Circuit Clerk maintains a list of persons who are available to serve as neutrals. The list contains the names of individuals who have met qualifications established by the Missouri Supreme Court and have asked to be on the list. The Circuit Clerk also has Neutral Qualifications Forms on file. These forms have been submitted by the neutrals on the list and provide information on their background and expertise. They also indicate the types of alternative dispute resolution services each neutral provides.

A copy of the list may be obtained by request in person and in writing to: Circuit Clerk, Office of Dispute Resolution Services, 7900 Carondelet Avenue, 5th Floor, Clayton, Missouri 63105. The Neutral Qualifications Forms will also be made available for inspection upon request to the Circuit Clerk.

The List and Neutral Qualification Forms are provided only as a convenience to the parties in selecting a neutral. The court cannot advise you on legal matters and can only provide you with the List and Forms. You should ask your lawyer for further information.